

A-5545

Appeal from the denial of a Building Permit by the Village Manager to construct a main residence. The applicant asserts that the Village Manager was in error when he denied a permit for a new residence that would be 36.16 feet in height at the roof ridge and 29.23 feet at the mid-point of roof between the eaves and ridge.

McCullough Residential, LLC  
117 Oxford Street

**CHEVY CHASE VILLAGE  
NOTICE OF PUBLIC HEARING**

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Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 11<sup>th</sup> day of May, 2009 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-5545  
McCULLOUGH RESIDENTIAL, LLC  
117 OXFORD STREET  
CHEVY CHASE, MARYLAND 20815**

Pursuant to Section 8-12 of the Village Code, the applicant has filed an appeal from the denial of a Building Permit by the Village Manager to construct a main residence. The applicant asserts that the Village Manager was in error when he denied a permit for a new residence that would be 36.16 feet in height at the roof ridge and 29.23 feet at the mid-point of the roof between the eaves and ridge.

**The Chevy Chase Village Code § 8-1 (e) states:**

*Building height:* The vertical distance measured from the average elevation of the finished grade or pre-development grade, whichever is lower, along the front of the building to either:

- (1) the highest point of roof surface regardless of roof type, or
- (2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

**The Chevy Chase Village Code § 8-17 (o) states:**

The height of any main building shall not exceed the lesser of thirty-five (35) feet when measured to the highest point of the roof surface regardless of roof type, thirty (30) feet when measured to the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof, or thirty (30) feet when measured to the roof surface of a flat roof.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at [www.ccvillage.org](http://www.ccvillage.org) or you may contact the office for this information to be mailed to you.

This notice was mailed to abutting property owners on the 30<sup>th</sup> day of April, 2009.

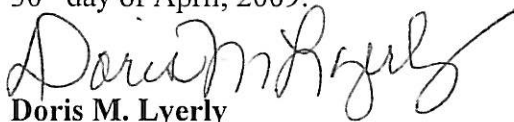
**Chevy Chase Village Office  
5906 Connecticut Avenue  
Chevy Chase, Maryland 20815  
301-654-7300**

**Mailing List for Appeal A-5545**

**McCULLOUGH RESIDENTIAL, LLC**  
**117 OXFORD STREET**  
**CHEVY CHASE, MARYLAND 20815**

<b>Adjoining and confronting property owners</b>	
Mr. Theodore Patch Ms. Tracey B. Smith Or Current Resident 106 Oxford Street Chevy Chase, MD 20815	Mr. and Mrs. Richard Efron Or Current Resident 108 Oxford Street Chevy Chase, MD 20815
Mr. Joseph A. Hawley Or Current Resident 115 Oxford Street Chevy Chase, MD 20815	Ms. Rita J. Simon Or Current Resident 110 Primrose Street Chevy Chase, MD 20815
Mr. Timothy P. Matthews Or Current Resident 113 Primrose Street Chevy Chase, MD 20815	Mr. and Mrs. Howard Jacobs Or Current Resident 115 Primrose Street Chevy Chase, MD 20815
Mr. Robert Kayton Ms. Suzanne Resnick Or Current Resident 117 Primrose Street Chevy Chase, MD 20815	Mr. and Mrs. D. Sloan Derrin Or Current Resident 119 Primrose Street Chevy Chase, MD 20815
Mr. Jonathan A. Kaplan Ms. Jill S. Wilkins Or Current Resident 121 Primrose Street Chevy Chase, MD 20815	Dr. and Ms. Walter Reich Or Current Resident 200 Primrose Street Chevy Chase, MD 20815
Mr. James L. Durham Ms. Beth Lyle-Durham Or Current Resident 201 Primrose Street Chevy Chase, MD 20815	

I hereby certify that a public notice was mailed to the aforementioned property owners on the 30<sup>th</sup> day of April, 2009.



**Doris M. Lyerly**  
**Chevy Chase Village**  
**5906 Connecticut Avenue**  
**Chevy Chase, MD 20815**

GEOFFREY B. BIDDLE  
*Village Manager*  
DAVID R. PODOLSKY  
*Legal Counsel*

CHEVY CHASE VILLAGE  
5906 CONNECTICUT AVENUE  
CHEVY CHASE, MD 20815  
Telephone (301) 654-7300  
Fax (301) 907-9721  
ccv@montgomerycountymd.gov

BOARD OF MANAGERS  
DOUGLAS B. KAMEROW

*Chair*  
DAVID L. WINSTEAD  
*Vice Chair*  
SUSIE EIG  
*Secretary*  
GAIL S. FELDMAN  
*Treasurer*  
BETSY STEPHENS  
*Assistant Treasurer*  
PETER M. YEO  
*Board Member*  
ROBERT L. JONES  
*Board Member*

April 30, 2009

Mr. Thomas A. McCullough  
McCullough Residential, LLC  
5039 Connecticut Avenue, N.W., Suite 4  
Washington, DC 20008

RE: 117 Oxford Street Residence, Chevy Chase, MD

Dear Mr. McCullough:

Please note that your appeal from the denial of a Building Permit by the Village Manager to construct a main residence on the above-referenced property is scheduled before the Board of Managers on Monday, May 11, 2009 at 7:30 p.m.

Either you or a representative must be in attendance to present your case. At that time, additional documents may be introduced and testimony can be provided in support of your request.

For your convenience, enclosed please find copies of the Public Hearing Notice and mailing list. Please contact the Village office in advance if you will be unable to attend.

Sincerely,



Doris M. Lyerly  
Permitting & Code Enforcement Specialist  
Chevy Chase Village

Enclosures



Greg DAVIS

FAY 202-464-1905

\$5000.00 Filing Fee

**Chevy Chase Village  
Building Permit  
Application**

MC Permit # 504131

Permit Number: 5545Date of Application: 4.14.09

Applicant Name: <u>M'Callough Residences LLC</u>	
Address: <u>117 Oxford Street</u>	Phone: <u>301 370 3353</u>
Contractor: <u>Same as above</u>	Phone: <u>Same as above</u>
Contact Person: <u>Greg Davis</u>	MHI/MD Contractor's Lic. No.

**Filing Requirements**

- ☐ A recent house location survey showing all existing and proposed structures.
- ☐ Construction plans and specifications. If trees that are twenty-four inches (24") in circumference or larger measured four feet six inches (4'6") above ground level are at risk of being disturbed during the construction, they must be shown on the submittal plans.
- ☐ Copy of stamped, approved Montgomery County drawings (if required). These drawings will remain on file at Chevy Chase Village.
- ☐ Copy of plans that show location of dumpster, portable sanitation facility, delivery zone and parking area.
- ☐ Copy of Covenants (if required).
- ☐ The filing fees for a Chevy Chase Village Building Permit are listed in Chapter 6 of the Village Code.
- ☐ Completed Building Permit Application and payment of filing fees.

*The Village Manager will review the application and accompanying documents and, under most circumstances, will act on the building permit within 5 to 10 working days.*

*In the event the Montgomery County building permit is suspended, revoked or lapsed, the Village permit is automatically suspended, revoked or lapsed.*

*No signs advertising the contractor, architect or other service provides associated with the permitted project shall be posted on the site.*

I hereby certify that I have the authority to make the foregoing application, that the application is correct, that I have read and understood all requirements and that the construction will conform to the regulations of the Building Code, the Montgomery County Zoning Code, the Village Tree Ordinance, and all applicable covenants on the above property.

Applicant's Signature: \_\_\_\_\_

Greg DavisDate: 4.14.09

For use by HPC only:

Historic Area Work Permit required?

Yes ☐No ☐ \_\_\_\_\_ (HPC initials)



<b>Exact Description of Construction Plans:</b>
Build a new single family home
<input type="checkbox"/> Check here if the construction will require the demolition of over fifty (50) percent of any existing structure. <input type="checkbox"/> Check here if a dumpster will be used (only permitted on private property). If so, applicant must file for a Village Dumpster Permit.

<b>Parking Compliance</b>
Is adequate on-site parking available for the construction crews? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>
If the answer is no, please provide a plan for parking which minimizes inconvenience to neighboring residents indicating if the property is in a permit parking area.
Will road closings be required due to deliveries, equipment or other reasons? <i>Probably not</i> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>
<b>Responsible Party:</b>
Will the residence be occupied during the construction project? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>
If no, please provide the name, address, business and after-hours phone number for the project manager or the party responsible for the construction site.
<i>Greg Davis 301 370 3358</i>

For Use By Village Manager	Approved with the following conditions:
<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>D E N I E D</b>          APR 19 2009          Chevy Chase          Village Manager       </div>	Denied for the following reasons:
	<i>EXCESS MAXIMUM BUILDING HEIGHT MAXIMUM of 35' to ridge</i>
	<i>Jeff Bide</i>

Permit Fee Plan Fee Appeal Fee Tree Preservation Plan Total Fees & Deposits	Checks Payable To: Chevy Chase Village 5900 Connecticut Avenue Chevy Chase, MD 20815 Date: Staff Signature:
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#5000<sup>00</sup>#5000<sup>00</sup>

received

4-14-09 *Debra M. Rye*  
 # 7218

Appeal #350 4-20-09 #7263, 7264<sup>300</sup> <sup>50</sup>

#7265 #330  
 (Appeal VM Decision)

# McCullough Residential, L.L.C.

April 24, 2009

The Board of Managers  
5906 Connecticut Avenue  
Chevy Chase, MD 20815

Re: 117 Oxford Street  
Chevy Chase, MD 20815  
Building Permit Appeal

Dear Board Managers:

We believe that Geoff Biddle (the Chevy Chase Village Manager), Doris Lyerly and the entire Chevy Chase Village staff have been very helpful in assisting us through the permitting process and we appreciate all of their efforts.

However, we are now appealing the decision of the manager to reject our building permit due to building height.

Please allow the information below to summarize our position regarding the height issue.

1. The language in the Chevy Chase Building Code Section 8-17 reads as follows:

*(o) The height of any main building shall not exceed **the lesser of thirty-five (35) feet** when measured to the highest point of the roof surface regardless of roof type, **thirty (30) feet** when measured to the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof, **or thirty (30) feet** when measured to the roof surface of a flat roof. (emphasis supplied).*

We believe we satisfy the above requirement in that our midpoint elevation is 29.23' from "Average Grade". We do not believe this criteria forces us to satisfy both the mid point and the ridge height.

2. Our attorney, Todd Brown (Linowes and Blocher) agrees with our position. (Refer to Exhibit A.)

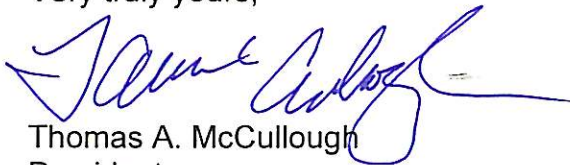
The Board of Managers  
April 24, 2009  
Page 2

3. As you will see, the Montgomery County Zoning Administrator, Robin Ferro, agrees with our position (when evaluating the CCV regulations, not Montgomery County's), Malcolm Spicer, the Montgomery County Zoning Attorney, agrees with our position as does our Architect (GTM) and our Civil Engineer (CAS Engineering). This is not simply a misinterpretation by a Developer and his Architect. (Refer to Exhibit A.)
4. CAS Engineering has established the "Average Grade" as 349.16'. (Refer to Exhibit B.) The ridge of this roof is 36.16' and that is 1.16' above the criteria that CCV had intended, if both criteria were mandatory. From "Average Grade", the mid point is 29.23'.

The engineering and architectural solutions are not acceptable as they are cost prohibitive. You are aware of serious geotechnical challenges that we face due to the ground water conditions and we cannot lower the basement. (Refer to Exhibit C – CIS Engineering Report dated April 17, 2009.) A modification of the 12:12 roof pitch is not desirable and would detract from the architecture. The simplest solution involves lowering ceiling heights (6-7 inches per floor) and that would cost \$10,000-\$15,000 in design and engineering and translate into a less marketable product as the first floor ceilings are only 9 feet.

Thank you for your consideration in this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Thomas A. McCullough", with a stylized flourish extending from the end.

Thomas A. McCullough  
President

Attachments





ENGINEERING

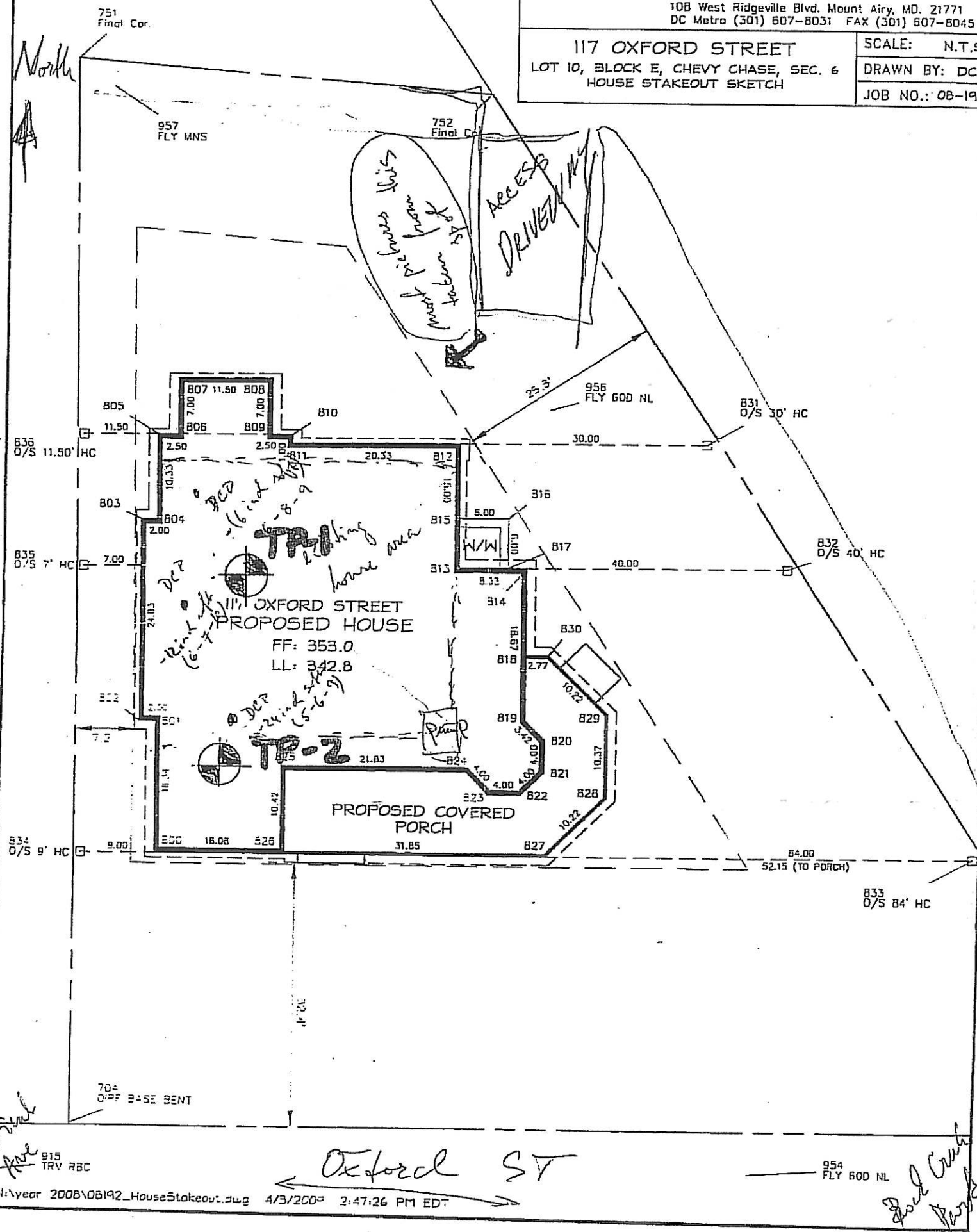
CIVIL - SURVEYING - LAND PLANNING  
A DIVISION OF CAS ENTERPRISES, INC.  
108 West Ridgeville Blvd. Mount Airy, MD. 21771  
DC Metro (301) 607-8031 FAX (301) 607-8045

117 OXFORD STREET  
LOT 10, BLOCK E, CHEVY CHASE, SEC. 6  
HOUSE STAKEOUT SKETCH

SCALE: N.T.S.

DRAWN BY: DCL

JOB NO.: 08-192

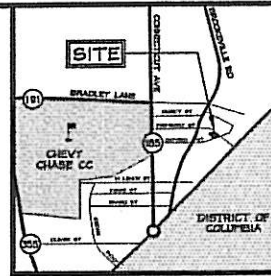


# PROFESSIONAL ENGINEER CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 16646, EXPIRATION DATE 03/08/2010, AND THAT THIS PLAN MEETS MCDPS CRITERIA FOR BUILDING PERMIT APPLICATIONS.

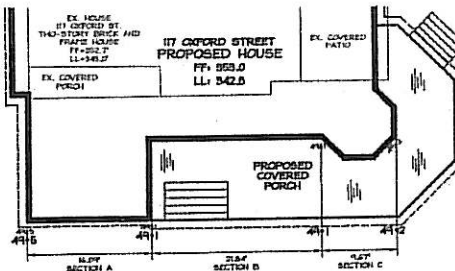
01/19/2008  
DATE

*Curt A. Schreffler*  
CURT A. SCHREFFLER, PE



VICINITY MAP  
ADC MAP 5407, GRID J-5  
SCALE: 1" = 2000'

## AVERAGE GRADE DETERMINATION



	ELEV #	ELEV #	AVG.	SECTION	% TOTAL	AVERAGE
	POINT 1	POINT 2	GRADE	LENGTH	LENGTH	GRADE x
Section A	349.5	349.1	349.30	16.09	33.00%	18.06
Section B	349.1	349.1	349.10	21.84	45.00%	160.16
Section C	349.1	349.2	349.15	1.67	20.32%	70.14
AVERAGE GRADE = 349.16						

## DRAINAGE STATEMENT

IN ACCORDANCE WITH SECTION 8-202, CONTROL OF WATER RUNOFF ON SMALL LOTS, DRAINAGE CONTROL FOR THIS LOT IS PROVIDED BY GRADING FOR POSITIVE DRAINAGE SO AS NOT TO INCREASE WATER RUNOFF RESULTING FROM ADDITIONAL IMPERVIOUS AREA THAT WOULD DRAIN ONTO ANY ADJACENT OR NEARBY PRIVATE PROPERTY.

SPECIFICALLY, ALL WATER RUNOFF FROM IMPERVIOUS AREAS ON THE SUBJECT PROPERTY DRAINS TOWARD THE PUBLIC RIGHTS-OF-WAY (PRIMROSE STREET AND OXFORD STREET) TO THE EAST AND SOUTH.

ADDITIONALLY, ALL DISTURBED AREAS WILL BE TOPSOILED PER MCDPS SPECIFICATIONS.

117 OXFORD STREET  
LOT 10, BLOCK E

P.B. 3, PLAT 258, CIRCA 07/16/1923

CHEVY CHASE, SEC. 6

BETHESDA (7TH) ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND

BUILDING PERMIT SITE PLAN

ENGINEERING

CIVIL • SURVEYING • LAND PLANNING  
A DIVISION OF CAS ENTERPRISES, INC.

108 West Ridgeville Boulevard, Suite 101, Mount Airy, Maryland 21771  
DC Metro (202) 607-6031 FAX (301) 607-6045



## APPLICANT

MCULLOUGH RESIDENTIAL, LLC  
5029 CONNECTICUT AVENUE, NW  
SUITE 400  
WASHINGTON, DC 20008  
(202) 237-2416 PHONE  
(202) 464-1705 FAX

## ARCHITECT

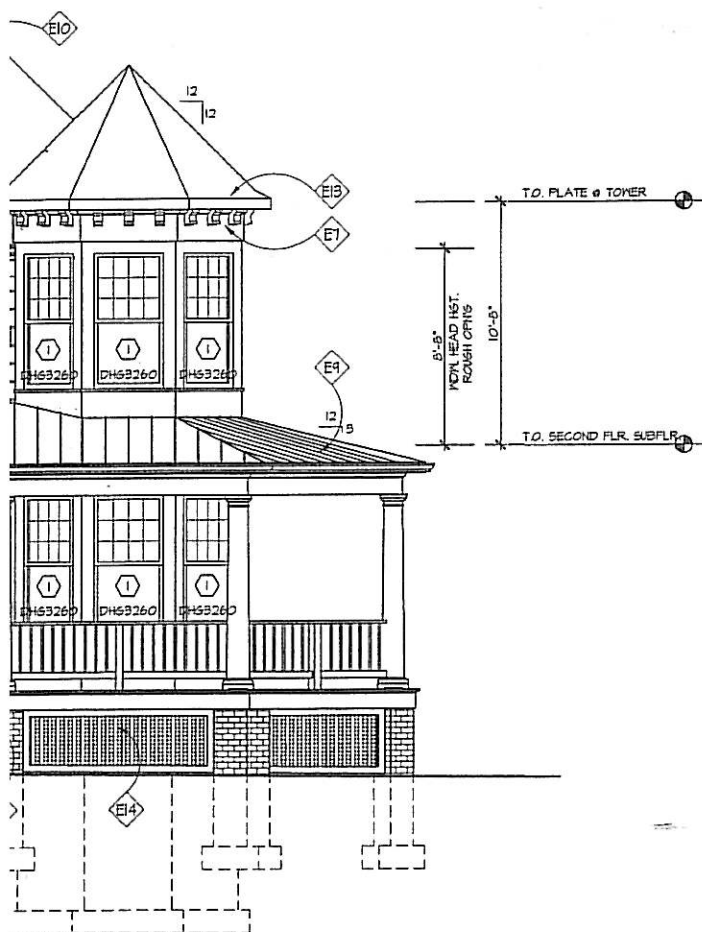
GTH ARCHITECTS  
7714 DOUG ROBERTS  
7715 OLD GEORGETOWN ROAD  
SUITE 700  
BETHESDA, MD 20814  
(240) 533-2003 PHONE

117 OXFORD STREET  
LOT 10, BLOCK E  
CHEVY CHASE, SECTION 6  
CHEVY CHASE VILLAGE  
BUILDING PERMIT SITE PLAN

PRINTED BY

JAN 19 2009

CAS ENGINEERING



## ELEVATION NOTES

- E1 RIDGE VENT; SEE ROOF PLAN
- E2 PTD. AZEK 5/4x6 WINDOW/DOOR TRIM, TYP.; SEE GENERAL AZEK TRIM NOTES, THIS SHEET
- E3 PTD. 5/4x TRIM BAND; CUT TO FIT, ALIGN W/ TOP OF WINDOWS/DOORS
- E4 6" COPPER GUTTER & DOWNSPOUT T.B.S.
- E5 CROWN MOULDING, SHOOT LUMBER KM-53, PTD.
- E6 RAILS SYSTEM, COLOR & STYLE T.B.S.
- E7 PTD 1x, CUT TO FIT
- E8 BRICK VENEER, TO BE SELECTED
- E9 COPPER ROOF
- E10 ASPHALT ROOF SHINGLES; SEE ROOF PLAN
- E11 CEDAR SHINGLES (OR PTD. HARDI-PLANK SHINGLES) STRAIGHT-EDGE NOTCHED PANEL; 7" EXPOSURE, INSTALL PER MANUFACTURER.
- E12 PTD. 12" ROUND HD&G PERMACAST STRUCTURAL COLUMN
- E13 PTD. BRACKET, FYPON BKTSx8 (B 1/4"H x 4 13/16"W x 5 7/16" PROJECTION)
- E14 PTD. LATTICE PANEL, SEE DETAIL 19/A3.5'

GEORGETOWN COUNTY  
APPROVED  
AS NOTED  
PLAN REVIEW SECTION

## NOTE:

1. VERIFY ALL EXTERIOR RISER & TREAD DIMENSIONS IN FIELD

## GENERAL AZEK TRIM NOTES

GLUE ALL AZEK TO AZEK JOINTS SUCH AS WINDOW SURROUNDS, LONG FASCIA RUNS, ETC., WITH AZEK ADHESIVE TO PREVENT JOINT SEPARATION.

THE GLUE JOINT SHOULD BE SECURED WITH A FASTENER AND/OR FASTENED ON EACH SIDE OF THE JOINT TO ALLOW ADEQUATE BONDING TIME.

AZEK ADHESIVE HAS A WORKING TIME OF 10 MINUTES AND WILL BE FULLY CURED IN 24 HOURS.

IF STANDARD PVC CEMENTS ARE USED, KEEP IN MIND THESE PRODUCTS TYPICALLY CURE QUICKLY WHICH WILL RESULT IN LIMITED WORKING TIME AND MAY REDUCE ADHESIVE STRENGTH. AS SUCH THEY ARE NOT ACCEPTABLE.

FOR BEST RESULTS, SURFACES TO BE GLUED SHOULD BE SMOOTH, CLEAN AND IN COMPLETE CONTACT WITH EACH OTHER.

TO BOND AZEK TO OTHER SUBSTRATES, VARIOUS ADHESIVES MAY BE USED. CONSULT ADHESIVE MANUFACTURER TO DETERMINE SUITABILITY. AZEK PRODUCTS EXPAND AND CONTRACT WITH CHANGES IN TEMPERATURE.

PROPERLY FASTENING AZEK MATERIAL ALONG ITS ENTIRE LENGTH WILL MINIMIZE EXPANSION AND CONTRACTION.

WHEN PROPERLY FASTENED, ALLOW 1/8" PER 10' FOOT OF AZEK PRODUCT FOR EXPANSION AND CONTRACTION. JOINTS BETWEEN PIECES OF AZEK SHOULD BE GLUED TO ELIMINATE JOINT SEPARATION. SEE "GLUING" DIAGRAM BELOW.



WHEN GAPS ARE GLUED ON A LONG RUN OF AZEK, ALLOW EXPANSION AND CONTRACTION SPACE AT ENDS OF THE RUN.

INSTALL PER AZEK.

FOR ADDITIONAL INFORMATION, VISIT WWW.AZEK.COM OR CALL 877-ASK-AZEK.

GTM

GTM ARCHITECTS

7735 OLD GEORGETOWN ROAD  
SUITE 700  
BETHESDA, MD 20814  
(240)333-2000  
(240)333-2001 FAX

117 OXFORD STREET  
CHEVY CHASE, MD  
FRONT ELEVATION

McCULLOUGH  
RESIDENTIAL

## REVISIONS:

PERMIT SET: 01.23.09

SEAL:



DRAWN BY:

DER

CHECKED BY:

GTM

SCALE:

AS NOTED

DATE:

01.23.09

PROJECT NO.

08.0391

DRAWING NO.

A2.0

Professional Certification: I certify that these documents were prepared or approved by me, and that I am a duly licensed architect under the laws of the State of Maryland.  
Licenses Number: 8740  
Expiration Date: 12/31/10

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

April 17, 2009

Todd D. Brown  
tbrown@linowes-law.com  
301.961.5218

Debra S. Borden  
dborden@linowes-law.com  
301.961.5250

Geoffrey B. Biddle  
Village Manager  
Village of Chevy Chase  
5906 Connecticut Avenue  
Chevy Chase, Maryland 20815

Re: 117 Oxford Street

Dear Mr. Biddle:

This firm represents McCullough Residential, L.L.C. (the "Applicant"), which has applied for a building permit for property located at 117 Oxford Street, in the Village of Chevy Chase (the "Property"). The Applicant has been informed that you are of the opinion that the proposed building height fails to conform to the Code of Laws and Regulations of the Village of Chevy Chase (the "Village Code"). We respectfully disagree.

The house at 117 Oxford Street was designed with a height of 29 feet, 3 inches at the mean height level between the eaves and roof ridge, and the roof pitch or highest point is 36 feet, 1 inch. These specifications are in full compliance with the Village Code.

Section 8-17 of the Village Code states that:

*(o) The height of any main building shall not exceed the lesser of thirty-five (35) feet when measured to the highest point of the roof surface regardless of roof type, thirty (30) feet when measured to the mean height level between the eaves and ridge of a gable, hip, mansard or gambrel roof, or thirty (30) feet when measured to the roof surface of a flat roof. (emphasis supplied).*

The use of the words, "the lesser of" and "or" clearly indicate that only one of the standards must be met, not all of them. The Applicant's proposed mean height level of 29 feet 3 inches is within the maximum standard of 30 feet set forth above, therefore the height is in compliance with the Village Code.

In interpreting the height provision, the rules of statutory construction require that we focus on the plain meaning of the words in order to determine the meaning and application to a specific set of facts. *Kushell v. Department of Natural Resources*, 385 Md. 563, 576 (2005), citing *Deville v. State*, 383 Md. 217, 223 (2004). Further, it is well established and recognized by



Geoffrey B. Biddle  
April 17, 2009  
Page 2

Maryland Courts, that the disjunctive "or" indicates a relationship of contrast or opposition. *Schlossberg v. Citizens Bank of Maryland*, 341 Md. 650, 657 (1996), citing *In Re John R.*, 41 Md. App. 22, 25 (1978).

The language in the Village Code is clear and unambiguous. The use of the word "or" at the end of the list of height standards indicates that only one standard must be met. Further clarification that only one standard is required is provided by the phrase, "the lesser of" which makes sense only if one of the standards applies, not all of the standards listed after the phrase. Statutory text should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory. Rather, the statutory scheme should be analyzed as a whole and the provisions harmonized so that each are given its intended effect. *Maryland Overpak Corporation v. Mayor and City Council of Baltimore*, 395 Md. 16, 48 (2006). The plain meaning of the language is clear, and in such cases, there is no need, and the Court will not permit, reliance on extrinsic evidence to demonstrate legislative intent. *Condon v. State of Maryland-University of Maryland*, 332 Md. 481, 491 (1993). Where the language is clear, the language itself is the definitive expression of intent.

We also note a similarly worded definition of building height is contained in the Montgomery County Zoning Ordinance. Section 59-A-2.1 states:

***Height of residential building in the R-60 and R-90 zones:*** For any one-family detached residential building in the R-60 or R-90 zone, building height is the vertical distance measured from the average elevation of the finished grades along the front of the building to either: (1) the highest point of roof surface regardless of roof type, or (2) the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof.

The use of the words "either" and "or" indicate that the standards are mutually exclusive, and may be met by compliance with either, exclusive of the other. This interpretation is longstanding and is supported by the Montgomery County Department of Permitting Services (DPS) which enforces building code and development standards for the County, as well as the County Attorney's Office. See Email Correspondence from Robin Ferro of DPS, and Malcolm Spicer of the County Attorney's Office.

Finally, we refer you to the Maryland Court of Special Appeals decision in *Citizens Coordinating Committee of Friendship Heights v. Frank Associates Child Assistance International*, No. 923, September Term 1997 (unreported). In this case (copy enclosed), the Court reviewed a building height provision that, like the Village Code, established compliance requirements utilizing the disjunctive "or", similar to the Village Code provision. In its decision, the Court stated quite succinctly, "For reasons we are unable to fathom, the Board [of Appeals] failed to recognize the disjunctive "or" in Section 59-C-1.327(a)...when interpreting Section 59-

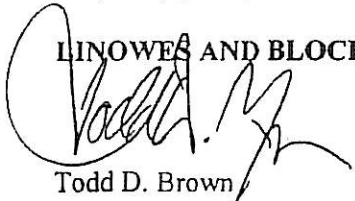
Geoffrey B. Biddle  
April 17, 2009  
Page 3

C-1.327(a) on remand, the Board should consider the disjunctive word "or". *Citizens Coordinating Committee* at 8-10.


In the Village Code, not only is the disjunctive "or" used, but the additional term "the lessor of" is also used, clearly indicating that the building height must not exceed only the lessor of the identified building height standards. Based on the plain language of Section 8-17 of the Village Code, there is no reasonable interpretation that would require two or more of the building height standards to be met. Such interpretation would require the Village to disregard both "the lesser of" and "or" language in the Code. This a Court will not allow. The proposed building height for 117 Oxford Street conforms to the height standards of Section 8-17 as written, therefore a permit should be issued. The Village of Chevy Chase may amend the Village Code to revise the language so that the standards are cumulative, but consideration of the permit must be based on the current law as written, not as contemplated for some future amendment.

Thank you for considering our position. Please contact us if you have any questions or need additional information.

Very truly yours,

  
**LINOWES AND BLOCHER LLP**

Todd D. Brown

  
Debra S. Borden

Attachments

cc: Thomas A. McCullough

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 923

September Term, 1997

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CITIZENS' COORDINATING COMMITTEE OF  
FRIENDSHIP HEIGHTS, INC., et al.

v.

FRANK ASSOCIATES CHILD ASSISTANCE  
INTERNATIONAL, INC.,

---

Murphy, C.J.,  
Wenner,  
Davis,

JJ.

---

Opinion by Wenner, J.

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Filed: March 3, 1998

Appellant, Citizens' Coordinating Committee of Friendship Heights, Inc. (CCFH), appeals from a judgment of the Circuit Court for Montgomery County affirming the decision of the Board of Appeals of Montgomery County (the Board). On appeal, CCFH presents us with the following questions:<sup>1</sup>

- I. Did the Board err as a matter of law in interpreting the zoning code as authorizing it to grant a special exception even though the code's setback requirements were not met?
- II. Did the Board err as a matter of law in interpreting the zoning code as authorizing it to waive the code's building height limit?
- III. Were the Board's findings as to:
  - a. adequacy of parking;
  - b. safety; and
  - c. consistency with the Master Plan based on an erroneous legal standard and otherwise not in accordance with law?

Although we shall affirm the judgment of the circuit court as to III b, and c, we shall vacate the judgment as to I, II, and III a, and remand the case to that court for further proceedings consistent with this opinion.

#### Facts

The property at issue is located at 6208 Wisconsin Avenue (6208) in a single-family residential area approximately halfway between the Friendship Heights and Bethesda Central Business Districts. The Board granted appellee, Frank Associates Child Assistance International, Inc. (Frank Associates), a Special

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<sup>1</sup> For clarity, we have rephrased and condensed CCFH's questions.

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Exception, permitting it to use 6208's first floor for offices. 6208 is a Victorian-style single-family home. Frank Associates, with a staff of no more than six employees, assists in international adoptions. Frank Associates' President and his family will reside with his family on the upper floors.

6208 fronts on Wisconsin Avenue, a heavily-traveled thoroughfare. It was constructed in the early 1900s, and is the largest and most conspicuous residential property in the area.

Many residents appeared before the Board to oppose the proposed special exception, feeling threatened by the incursion of further commercial uses into their neighborhood. Of the twenty-one buildings in the area with a front or side yard facing Wisconsin Avenue, five are no longer single-family residences.<sup>2</sup> The protestants also voiced concerns about safety, property value and traffic.

#### Standard of Review

We recently enunciated our standard of review for special exception challenging special exceptions in *Evans v. Shore Communications*, 112 Md. App. 284, 298-99, 685 A.2d 454 (1996):

We said recently in *Umerley v. People's Counsel*, 108 Md.App. 497, 672 A.2d 173, *cert denied*, 342 Md. 584, 678 A.2d 1049 (1996) that

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<sup>2</sup> These five uses include an office for a nonresident dentist, a private school, a group home for the ill elderly, a chiropractor's office, and a firehouse.

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[t]he order of a county zoning authority "must be upheld on review if it is not premised upon an error of law and if [its] conclusions reasonably may be based upon the facts proven."

*Id.* at 503, 572 A.2d 173 (quoting *Ad+Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 338, 513 A.2d 893 (1986)). In chronicling other guiding principles regarding the review of an order of a county zoning authority, we noted that the zoning authority must properly construe controlling law (citing *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287, 96 A.2d 261 (1953)); that the action of the zoning authority is "fairly debatable" if based on substantial evidence (citing *Northampton Corp. v. Prince George's County*, 273 Md. 93, 101, 327 A.2d 774 (1974)); and that the fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment.'" (citing *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988)). We noted that in *Ocean Hideaway Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. 650, 665, 515 A.2d 485 (1986), we had held that the zoning authority decision was not fairly debatable, and thus was "arbitrary, capricious and a denial of due process of law" because there was no substantial evidence to support the factual findings of the zoning authority.

We held, in *Umerley*, that the application of the standards of review set forth required a three-step analysis enunciated by us in *Comptroller v. World Book Childcraft, Int'l, Inc.*, 67 Md. App. 424, 508 A.2d 148, *cert. denied*, 307 Md. 260, 513 A.2d 314 (1986):

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1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing the case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."

2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion....

3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is "whether, ... a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]."

*Id.* at 438-39, 508 A.2d 148 (emphasis added, citations omitted).

I.

CCFH first claims that the Board erred in interpreting the Montgomery County Zoning Code (the Code) as permitting a special

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exception that fails to comply with required setbacks. The pertinent provisions of the Code are:

Sec. 59-G-2.21 Charitable or philanthropic institution. (Formerly "Eleemosynary and philanthropic institutions") A special exception may be granted for a charitable or philanthropic institution subject to the following requirements:

- (a) In the . . . One-Family Residential Zones regulated by Section 59-C-1.32, the development standards are as follows:
  - [ . . . ]
  - (3) Minimum side yard setback: twice the minimum required by section 59-C-9.4 or 59-C-1.32, whichever is applicable.
    - [ . . . ]
- (b) The board may waive the standards stated in paragraphs (a)(1) through (9), above, if the special exception is for re-use, without significant enlargement, of an existing building that either complies with the standards of the zone in which the property is located, was originally approved for another special exception use, or is designated as a historic resource by the master plan for historic preservation. The Board must not grant any such waiver unless it finds that:
  - (1) Road access will be safe and adequate for the anticipated traffic to be generated; and
  - (2) The requested special exception currently complies with the general conditions stated in section 59-G-1.21.
    - [ . . . ]
- (f) Adequate parking must be provided on site in accordance with the requirements for a general office, as stated in Section 59-E-3.7 and the setback and screening standards of Sections 59-E-2.8 and 59-E-2.9, respectively.

Sec. 59-E-2.8. Parking facilities within or adjoining residential zone.

59-E-2.81. Setback.

- (a) Where a parking facility is within a residential zone or adjoins land in a



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residential zone that is neither recommended for commercial or industrial use on an approved and adopted master or sector plan, nor used for public or private off-street parking, nor in a public right-of-way that is 120 feet or more in width, residential setbacks apply as follows: All parking surfaces, spaces and driveways must be set back a distance not less than the applicable front, rear, or side yard setback required for the property in the residential zone that adjoins or confronts the applicable boundary of the parking facility. In addition, screening must be provided in accordance with the screening requirements of section 59-G-2.9. (Emphasis added.)

In addition, § 59-C-1.323(b) of the Code provides: "No main building shall be nearer to any property line than the following:  
... one side: 8 [feet]."

The trial judge determined that "[t]here is no setback requirement for driveways required by § 59-C-1.323(b), only for main buildings. The evidence presented to the Board demonstrated compliance with § 59-C-1.323(b) and therefore the Board correctly found compliance." We agree that § 59-C-1.323(b) addresses only the setback requirements for main buildings. The trial judge, however, failed to address the incorporation into § 59-G-2.21(f), of § 59-G-2.81, which requires driveways to comply with the setback standards of an adjacent residential zone.

The Board specifically noted that the driveway fails to comply with the eight-foot setback from the side lot line at the point where it enters the property, but that "the setback requirement is

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substantially and satisfactorily complied with, because the driveway has been in existence for many years, and except for this small portion, it meets the setback and screening requirements." Unfortunately for Frank Associates, the Board cited no authority for this conclusion.

While the Code affords the Board the latitude to grant such a waiver, its failure to cite authority for granting such a waiver leads us to believe that the Board neither recognized, nor applied appropriate legal standards for granting such a waiver.<sup>3</sup>

Under § 59-G-2.21(b), the Board may waive the § 59-G-2.21(a) (3) side yard setback requirements "if the special exception is for re-use, without significant enlargement, of an existing building that . . . complies with the standards of the zone in which the property is located . . . ." If the Board determines that the proposal meets the requirements of § 59-G-2.21(b), a resulting waiver of the § 59-G-2.21(a) (3) setback requirements would avert any conflict with § 59-E-2.81(a).<sup>4</sup> The Board does not appear to have engaged in the waiver analysis required by § 59-G-2.21(b), and

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<sup>3</sup> Throughout most of its written opinion, the Board cited various sections of the Code to support its decision. In this instance, however, the Board's opinion is curiously devoid of citations.

<sup>4</sup> Section 59-G-2.21(f) requires adequate on site parking in accordance with §§ 59-E-3.7, 59-E-2.8, and 59-E-2.9. A subsection of § 59-E-2.8 provides that "[a]ll parking surfaces, spaces and driveways must be set back a distance not less than the applicable front, rear or side yard setback . . ." By waiving the setback requirements of § 59-G-2.21(a)(3), the Board could waive Frank Associates' compliance with § 59-E-2.81(a).

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we may not do so for it.<sup>5</sup> On remand, the Board should consider whether such an analysis is appropriate. Alternatively, the Board may conclude that the driveway is a preexisting nonconforming use, and thus need not be considered in determining whether to grant a special exception.<sup>6</sup>

In sum, we are unable to determine which specific provision of the Code or what other authority the Board relied on. Thus, we shall remand the case for further proceedings.

## II.

CCFH next claims that the Board erred in waiving the Code's building height limit. The relevant provision of the Code provides:

**Sec. 59-G-2.21 Charitable or philanthropic institution.**  
[. . .]

A special exception may be granted for a charitable or philanthropic institution, subject to the following requirements:

- (a) In the . . . One-Family Residential Zones regulated by Section 59-C-1.32, the development standards are as follows:  
[...]

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<sup>5</sup> Read in its entirety, the Board's opinion may implicitly have analyzed 6200's compliance with current zoning standards. The analysis required by § 59-G-2.21(b), however, requires closer and more focused scrutiny than that in the Board's opinion.

<sup>6</sup> Section 59-G-2.21 provides: "the development standards are as follows. . . ." (Emphasis added). The Code provides no definition for "development standards" or "development." Taken literally, this phrasing could require any improvements to comply with the setback standards. Here, Frank Associates only planned to use the driveway, not to improve it. Such an interpretation could exempt the driveway.

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(8) Maximum building height: as specified in section 59-C-9.4 or 59-C-1.32, whichever is applicable.

Section 59-C-1.327 contains a table entitled "Maximum Building Height (in Feet)." Section 59-C-1.327(a) provides: "The height must not exceed 2½ stories or 35 feet if other lots on the same side of the street and in the same block are occupied by buildings with a building height the same or less than this requirement." The parties agree that § 59-C-1.327(a) applies to the present situation, but disagree as to its interpretation. According to evidence in the record, 6208 does not exceed thirty-five feet in height, nor will its planned addition. The Board said:

the building exceeds the maximum permitted, which is two-and-one-half stories. [...] In this case, the building does not exceed the maximum height for the R-60 zone of 35'. However, the configuration of space on the top floor does not comply with the requirements of a half story, according to the [Department of Environmental Protection] representative. [...]

[T]he Board finds that it can grant a waiver for the building height in accordance with Section 59-G-2.21(b).

For reasons we are unable to fathom, the Board failed to recognize the disjunctive "or" in § 59-C-1.327(a), which provides that a building may contain 2½ stories or be 35 feet in height, without violating the height requirements. Thus, there appears to be no need for the Board to have waived the height requirement.' When

<sup>7</sup> The parties hotly disputed the Board's authority to grant a waiver of 6208's height requirement.  
(continued...)

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interpreting § 59-C-1.327(a) on remand, the Board should consider the disjunctive word "or."

## III.

a.

CCFH next claims that the Board applied an incorrect legal standard in determining that 6208 had adequate parking. Sections 59-E-3.2 and 59-E-3.7 require 2.4 parking spaces for each 1,000 feet of office space. According to the Board, 6208's first floor, which is to be used for offices, contains 1,669 square feet, thus requiring four parking spaces, and the residential use of the upper floor requires two additional parking spaces. Consequently, the Board concluded that the Code required a total of six parking spaces. As the proposal included eight parking spaces, the Board concluded that parking was adequate.

In CCFH's view, § 59-E-3.7 mandates that gross square footage, as opposed to interior square footage, be used in determining the required parking spaces. The Board did not acknowledge which type of square footage was used. Because we are unable to ascertain whether "[the Board] recognized and applied the correct principles

<sup>7</sup> (...continued)

CCFH contends that the Board could only exercise its § 59-G-2.21(b) powers to waive the factors of § 59-G-2.21(a) (1) through (9), provided that § 59-G-2.21(a)'s special exception standards were more stringent than those standards ordinarily found in the zone. In a case involving § 59-G-2.21 standards such as (a)(8), where the height standard for a special exception merely incorporates by reference the ordinary height standard, CCFH believes the Board may not exercise its waiver powers. We believe a plain reading of § 59-G-2.21(b) permits the Board to waive any of the § 59-G-2.21(a)(1) through (9) factors. Had the promulgating authority seen fit to divest the Board of its waiver powers as to some but not all of these factors, it would have explicitly done so.

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of law governing the case," *Evans*, 112 Md. App. at 299 (quoting *World Book Childcraft, Inc.*, 67 Md. App. at 438-39), we shall remand the case to provide the Board an opportunity correctly to determine whether there are sufficient parking spaces."

b.

CCFH next claims that the Board erroneously based its conclusion that the proposed use will constitute neither a hazard, nor pose a threat to safety upon an incorrect legal standard. In order to grant a special exception, the Board must find that "the proposed use. . . [w]ill not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area." Code § 59-G-1.21(a)(7). The Board concluded the proposed use "will not create a hazard to vehicles or pedestrians in the area" and "cannot pose a threat to the safety of the area." CCFH believes that in using such words as "hazard" and "threat," the Board did not employ the legal standard prescribed by § 59-G-1.21 (a)(7). We disagree.

CCFH has resorted to tortuous reasoning in an attempt to disguise this issue as an error of law, but to no avail. The Board clearly recognized the correct principles of law in this instance.

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" At a 20 February 1996 hearing before the Board, an official of the Department of Environmental Protection testified that "closer to five" parking spaces would be required when basing the calculations on the gross square footage of the building at issue. Even if this be so, we note that the proposal includes eight parking spaces — one more than the seven spaces that would be required if the official's estimate was correct.

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as it recited the standard before embarking upon its discussion. "[A] reasoning mind could reasonably have reached the conclusion reached by the [Board]." *Evans*, 112 Md. App. at 299 (quoting *World Book Childcraft, Int'l, Inc.*, 67 Md. App. at 438-39.

c.

CCFH finally claims the Board erred in concluding that the proposed use is consistent with the Master Plan. Once again, CCFH elevates form over substance in its claim that the Board's choice of words denotes its adoption of an incorrect legal standard. The Board said that "the proposed special exception complies with the Bethesda-Chevy Chase Master Plan," and that it does not "violate" it. We do not believe the Board's failure to use the word "consistent" is fatal. The Board painstakingly detailed its reasons for concluding that the proposed use is consistent with the Master Plan. As this is a question of fact, not one of law, the Board is entitled to deference; because a reasoning mind could reasonably have reached the same conclusion, there was no error.

*Id.*

JUDGMENT AFFIRMED AS TO III b and c.  
JUDGMENT AS TO I, II AND III a.  
REVERSED AND REMANDED TO THE CIRCUIT  
COURT FOR MONTGOMERY COUNTY FOR  
FURTHER PROCEEDINGS CONSISTENT WITH  
THIS OPINION. COSTS TO BE PAID TWO  
THIRDS BY CCFH, AND ONE THIRD BY  
FRANK ASSOCIATES.

**Brown, Todd D. - TDB**

---

**From:** Tom McCullough [Tom@mccullough-construction.com]  
**Sent:** Wednesday, April 15, 2009 12:08 PM  
**To:** Brown, Todd D. - TDB  
**Subject:** FW: [BULK] RE: 117 Oxford Street  
**Importance:** Low

fyi

**Thomas A. McCullough**

**McCULLOUGH CONSTRUCTION, L.L.C.**  
**McCULLOUGH RESIDENTIAL, L.L.C.**  
5039 Connecticut Avenue, N.W., Suite 7, Washington, D.C. 20008  
Telephone: 202-237-2415 ext. 10/Fax: 202-237-2416  
[www.mccullough-construction.com](http://www.mccullough-construction.com)

---

**From:** Doug Roberts [mailto:droberts@GTMArchitects.com]  
**Sent:** Wednesday, April 15, 2009 12:03 PM  
**To:** George Myers  
**Cc:** Tom McCullough; Greg Davis  
**Subject:** FW: [BULK] RE: 117 Oxford Street  
**Importance:** Low

-----Original Message-----

**From:** Spicer, Malcolm [mailto:Malcolm.Spicer@montgomerycountymd.gov]  
**Sent:** Wednesday, April 15, 2009 12:01 PM  
**To:** Ferro, Robin  
**Cc:** Doug Roberts  
**Subject:** RE: [BULK] RE: 117 Oxford Street  
**Importance:** Low

Robin, I think you are correct. Mac

-----Original Message-----

**From:** Ferro, Robin  
**Sent:** Wednesday, April 15, 2009 9:46 AM  
**To:** Spicer, Malcolm  
**Cc:** 'Doug Roberts'  
**Subject:** RE: [BULK] RE: 117 Oxford Street

Mac,  
Please see Doug Roberts' question below my response...and he is asking you to also respond.

Robin Ferro  
Permitting Services Specialist  
Dept. of Permitting Services  
255 Rockville Pike  
Rockville, MD 20850  
240-777-6250

4/15/2009



Please visit our [zoning webpage](#) for code interpretations and zoning information.

-----Original Message-----

**From:** Doug Roberts [mailto:droberts@GTMArchitects.com]  
**Sent:** Wednesday, April 15, 2009 9:30 AM  
**To:** Ferro, Robin  
**Subject:** RE: [BULK] RE: 117 Oxford Street

Robin-

Thank you very much for your insight. If it's not too much trouble, could you please have the county attorney, Mr. Spicer, to weigh in on his interpretation as well, we think it would greatly help our situation to have his input. Please contact me if you have any questions.

Doug

-----Original Message-----

**From:** Ferro, Robin [mailto:Robin.Ferro@montgomerycountymd.gov]  
**Sent:** Wednesday, April 15, 2009 6:44 AM  
**To:** Doug Roberts  
**Subject:** [BULK] RE: 117 Oxford Street  
**Importance:** Low

Doug,

You are absolutely correct. Their height definition is the same as Co. Zoning Ordinance definition, and it states EITHER OR. You do not have to meet both height limitations, if that were the case it would state 30' to the mean AND 35' to the peak. Good luck.

Robin Ferro  
Permitting Services Specialist  
Dept. of Permitting Services  
255 Rockville Pike  
Rockville, MD 20850  
240-777-6250

Please visit our [zoning webpage](#) for code interpretations and zoning information.

-----Original Message-----

**From:** Doug Roberts [mailto:droberts@GTMArchitects.com]  
**Sent:** Tuesday, April 14, 2009 5:21 PM  
**To:** Ferro, Robin  
**Subject:** 117 Oxford Street

Robin-

I have an issue currently with Chevy Chase Village about the building height of an approved permit from Montgomery County. I have attached the Village guidelines for your review and conclusion of their explanation. We believe that we are within the guidelines. The house at 117 Oxford Street was designed at 29.3' to the mean (30' max) of the roof and is 36.1' to the pitch (35' max). The guidelines clearly state the house should meet one OR the other, just as the county guidelines. We are now being asked to make the house meet both requirements and feel CCV is incorrect with the interpretation. After reading the attached, please let me know your thoughts and if you concur. I do appreciate your time.

Thank you-

4/15/2009

**Douglas E. Roberts**  
Project Designer II  
GTARCHITECTS  
7735 Old Georgetown Road  
Suite 700  
Bethesda, MD 20814  
240 333 2024 direct  
240 333 2001 fax  
droberts@gtmarchitects.com  
www.gtmarchitects.com

<<SKMBT\_C20309041409460.pdf>>

# CIS ENGINEERING, INC.

## DAILY REPORT

<b>Project:</b>	Chevy Chase – Lot 10, Section 6/7 117 Oxford Street Chevy Chase, MD 20815-3330 Building Permit # 504131	<b>CIS Representative:</b>	Tim Gary, P.E.
<b>Client:</b>	McCullough Residential, LLC Attn: Mr. Greg Davis 5039 Connecticut Ave, NW, Suite 4 Washington, DC 20008 (o) 202.237.2415, x. 14 (f) 202.464.1705 (c) 301.370.3358 Greg@mccullough-construction.com	<b>Weather:</b>	Sunny /±50°-70°F
<b>Date:</b>	April 17, 2009	<b>Page:</b>	1

CIS Engineering, Inc. professional engineer reviewed problem building pad subgrade data. Field data was based on test pit observations made by CIS Engineering, Inc. engineering technician. This letter summarizes our observations and recommendations to date.

### Project Information and Site Observations

- It is our understanding that an existing house recently was removed and a new single-family house is planned for construction at the referenced project site. Neither structural plans nor site grading plans were provided for our review. However, based upon the **117 Oxford Street Lot 10, Block E, Chevy Chase, Sec. 6 House Stakeout Plan** printed April 3, 2009 by CAS Engineering, it is our understanding that proposed building will extend ±50-ft x ±60-ft. The planned FF=353.0-ft and LL=342.8-ft.
- Upon our technician's arrival at the project site, the contractor had begun excavation for the proposed house. Based on site information provided it is our understanding that the west side of the building pad was ±2-ft above the planned basement elevation, while substantially deeper excavations were still required along the eastern portion of the proposed building footprint.
- The contractor excavated two shallow test pits within the building area with a Bobcat excavator. The test pits extended to ±12-in or more below the proposed footing subgrade elevation. CIS Engineering, Inc. probed the exposed soils with hand equipment. Additionally, CIS Engineering, Inc. performed periodic Dynamic Cone Penetrometer (DCP) testing within the test pits in accordance with ASTM STP#399. With DCP testing a 45-degree, 1.0-in diameter, a sliding hammer falling 20 inches drives a steel conical point. Blows are recorded to seat the cone 2.0 inches and to drive the cone in 1.75-in increments. The DCP blows are correlated to the Standard Penetrometer Test (SPT) N-value which is an indication of the soil bearing capacity and strength properties.
- The exposed surficial soils generally consisted of yellow-brown to brown, saturated to very moist, very loose to loose silts with fine sand. The underlying ground generally consisted of gray, very moist to wet, loose to medium dense silts, sands, and gravel.

31 Sycolin RD, S.E.  
Leesburg, VA 20175

PHONE (703) 669-9052  
FAX (703) 534-2107  
E-MAIL ctseng@verizon.net

- Pockets of perched surficial water were observed over most of the building pad and the surficial  $\pm 6$ -in to  $\pm 12$ -in of the building pad was weak and saturated. Water was encountered in each test pit. Test Pit #1 was backfilled shortly after excavation. After  $\pm 4$ -hrs groundwater  $\pm 5$ -in deep had accumulated in the bottom of Test Pit #2. Glayed soils (gray-colored soils indicative of the past presence of groundwater) were present at  $\pm 1.5$ -ft to  $\pm 2.0$ -ft above the proposed basement elevation.

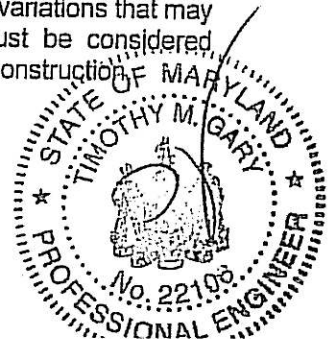
### Conclusions and Recommendations

- Based on our limited observations and testing it is our professional opinion that shallow perched groundwater will affect the proposed construction. As such, we recommend that the building pad be raised  $\pm 2$ -ft or more, if feasible.
- The surficial  $\pm 12$ -in of soil over the majority of the building pad was weak and saturated. Furthermore, the weak soils present in Test Pit #2, located near the  $\pm 16$ -ft x  $\pm 16$ -ft bump out at the southwest corner of the proposed building, extended to depths of  $\pm 2.0$ -ft or more. These weak and saturated soils were not suitable for direct foundation or basement slab support. These surficial soils must be overexcavated as needed to achieve approved stable ground. Based on our very limited observations and testing it is anticipated that average overexcavation depths on the order of  $\pm 1$ -ft to  $\pm 2$ -ft will be required. However, the final depths will vary in the field as needed.
- The overexcavated soils should then be replaced with open-graded #57 stone, gravel, or re-claimed concrete. The aggregate fill should extend up to the new basement subgrade elevation. (We proposed at least 2-ft above the currently planned basement subgrade elevation, if feasible.) The overexcavation and new fill must extend at least 3-ft on all sides beyond the building perimeter. The aggregate fill should be densified in-place with the grading equipment or other approved compaction equipment.
- Because of the presence of shallow ground water, well graded aggregate fill, such as CR-6, RC-6, or VDOT 21-A is not recommended for the proposed fill construction.
- All foundations should be nominally reinforced with at least two #4 steel bars (or more if indicated by the project structural plans.)
- CIS Engineering, Inc. must observe all overexcavation and new building pad fill construction. CIS, Inc. must verify all footing dimensions and steel reinforcement placement prior to concrete placement.

### Limitations

This preliminary report has been prepared for the exclusive use of McCullough Residential, LLC. in accordance with generally accepted geotechnical engineering practice. No other warranty, either expressed or implied, is made. The analysis and recommendations contained in this report are based on the data obtained from limited observation and testing of the subsurface materials. The test pits indicate soil conditions only at specific locations and times, and only to the depths penetrated. They do not necessarily reflect strata variations that may exist between the test locations. Consequently, the analysis and recommendations must be considered preliminary until the subsurface conditions can be verified by direct observation at the time of construction.

*Professional Certification: I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under laws of the State of Maryland License No.: 22106; expiration date September 18, 2010.*



Hollie J. Sawyer

Notary Public

Notary Public

Montgomery

Co., Md.

EXAMINED.

*Delivered to*  
*R. J. Spatia*  
*7-17-25*

AT the request of Edward R. Carr the following deed was recorded May 27th  
 A.D. 1925 at 2:53 o'clock P.M. to wit:-

This deed made this 27th day of May in the year of our Lord one thousand nine  
 hundred and twenty five by and between Theodore Sonnemann and Eliza Jane Sonnemann his wife,  
 of Montgomery County, Maryland parties of the first part, and Edward R. Carr of the District of  
 Columbia, party of the second part:

Witnesseth that in consideration of ten (10) dollars, lawful money of the  
 United States, to them in hand paid before the sealing and delivery of these presents the said  
 parties of the first part do grant and convey unto Edward R. Carr., party of the second part  
 his heirs and assigns in fee simple, all those places or parcels of ground situate lying and  
 being in Montgomery County, State of Maryland and being described as follows, to wit:-

Lot numbered eight (8) nine (9) ten (10) eleven (11) and twelve (12) in  
 block lettered "A" lots numbered seven (7) eight (8) nine (9) ten (10) eleven (11) twelve  
 (12) thirteen (13) fourteen (14) and fifteen (15) in block lettered "B" in a subdivision known  
 as "Section 6 Chevy Chase"; as per plat recorded in plat book No. 3 plat 258 one of the land  
 records for Montgomery County.

Lots numbered one to seven (1 to 7) both inclusive and lots numbered seventeen  
 (17) to twenty three (23) both inclusive in block lettered "B" lots numbered one (1) to  
 seventeen (17) both inclusive in block lettered "C" and lots numbered one to five (1 to 5) both  
 inclusive in block lettered "D": in a subdivision known as section 7 Chevy Chase; as per plat  
 recorded in plat book No. 3, plat 259 one of the land records for said Montgomery County.

Together with a small strip of land lying between Broad Branch Road and the  
 said lots five (5) six (6) and seven (7) in said block "B" which is designated to be taken  
 for the widening of said Broad Branch Road, but which strip of land is given to the owner of  
 said lots five (5) six (6) and seven (7) in said block "B" provided said road is not widened.

Subject to building restrictions and covenants as follows:

1. That all houses upon the premises hereby conveyed shall be built and used  
 for residence purposes exclusively except stables carriage houses sheds or other outbuildings  
 for use in connection with such residences and that no trade business manufacture or sales or  
 nuisance of any kind shall be carried on or permitted upon said premises.

2. That no structure of any description shall be erected within twenty five  
 (25) feet of the front line of said premises, and that no stable carriage-house, shed or  
 outbuilding shall be erected except on the rear of said premises.

3. That no house shall be erected on said premises at a cost of less than four  
 thousand dollars.

4. That any house erected on said premises shall be designed for the occupancy  
 of a



of a single family, and no part of any house or structure appurtenant thereto shall be erected or maintained within five (5) feet of the side lines of premises hereby conveyed nor within ten (10) feet of the nearest adjacent house.

6. That a violation of any of the aforesaid covenants and agreements may be enjoined by the parties of the first part, their successors heirs or assigns.

Together with the building and improvements thereupon, erected made, or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances, and advantages to the same belonging or in anywise appertaining.

To have and to hold the said pieces or parcels of ground and premises above described or mentioned and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the only proper use, benefit and behoof forever of the said Edward H. Carr his heirs and assigns in fee simple.

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed; that they are seized of the land hereby conveyed; that they have a right to convey said land; that the said party of the second part shall quietly enjoy said land; that they have done no act to encumber said land; and that they will execute such further assurances of said land as may be requisite.

Witness their hands and seals.

Test:

M.J. Sonnemann

Theodore Sonnemann (Seal)

Eliza Jane Sonnemann (Seal)

(Internal Revenue \$100.00)

State of Maryland, County of Montgomery, ss:-

I hereby certify that on this 27th day of May 1925, before the subscriber a Notary Public in and for Montgomery County, Maryland personally appeared Theodore Sonnemann and Eliza Jane Sonnemann, his wife, and did each acknowledge the foregoing deed to be their act.

In testimony whereof, I have affixed my official seal this 27th day of May

A.D. 1925.

Madeline J. Sonnemann  
Notary Public  
Montgomery  
Co., Md.

Madeline J. Sonnemann  
Notary Public  
Montgomery County, Maryland.

EXAMINED

Delivered to:

J.D. Woodworth

6-26-25

At the request of John A. Moore the following deed was recorded May 27th A.D. 1925 at 3:32 o'clock P.M. to wit:-

This deed made this twentieth day of May in the year nineteen hundred and twenty five by Rosa M. Graeves and Lewis B.F. Graeves her husband, of the county of Montgomery

and State of Maryland.

Witnesseth, that for and in consideration of the sum of ten dollars (\$10.00) the receipt of which is hereby acknowledged the said Rosa M. Graeves and Lewis B.F. Graeves her husband, do grant bargain and sell unto John A. Moore of the city of Washington and District of Columbia, in fee simple, all that tract part of a tract, piece and parcel of land, situate lying and being in the county of Montgomery and state of Maryland, being part of a tract of land called "Easter" or by whatever name or names the same may be known contained within the metas and bounds, courses and distances following, to wit:-

Beginning for the same at a heap of stone it being the corner of the late John Rabbitt's land and also the corner of Butt's <sup>old</sup> place and also the corner of James Hannie's land and running thence bounding on said James Hannie's land south seventy one degrees west, seventeen and one third perches to the east side of the Washington and Brookeville turnpike road; then running down and bounding on said turnpike road south twenty and one half degrees east, twenty nine and two thirds perches to a stone planted on the east side of the said road; then leaving the said road and running along the north side of the road leading to the late John Rabbitt's house north eighty one and one fourth degrees east fourteen perches; then north fourteen degrees west thirty two perches to the beginning, containing three acres more or less. It being the same land mentioned and described in a deed of conveyance from Alexander Elgour Trustee, to Rosa M. Graeves, dated the 22nd day of January, 1900, recorded among the land records of said Montgomery County in liber L.D. No. 12 folios 478 et seq., and the same land described in a deed of conveyance from Augusta C. Flock to Albert E. Gill, dated the 14th day of May 1878, recorded among the land records of said county in liber S.B.P. No. 18, folios 343 et seq.

Together with all and singular the buildings and improvements thereon and the rights and ways, and appurtenances thereto belonging or in anywise appertaining.

And the said Rosa M. Graeves and Lewis B.F. Graeves, her husband, covenant to warrant generally the land hereby conveyed and to execute such other deed as maybe requisite.

Witness our hands and seals.

Test: Rosa M. Graeves (Seal)  
A.M. Bonic L.B.F. Graeves (Seal)

(Internal Revenue \$6.50)

State of Maryland, Montgomery County, to wit:-

I hereby certify that on this 20th day of May in the year nineteen hundred and twenty five, before the subscriber a Notary Public of the state and county aforesaid personally appeared Rosa M. Graeves and Lewis B.F. Graeves, her husband, and did each acknowledge the foregoing deed to be their respective act.

As witness my hand and notarial seal.

Mary Lee Cusbell  
Notary Public  
Brookville  
Montg. Co., Md.

## **Lyerly, Doris**

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**From:** Kefron@aol.com  
**Sent:** Thursday, May 07, 2009 2:15 PM  
**To:** Lyerly, Doris  
**Subject:** Re: 117 Oxford Street

Dear Doris,

As I told you over the phone we will be out of town the 11th of May. We understand that Burt Schorr will be attending the meeting, and we have conveyed our concerns to him in the past week.

I should say that we actually find the house quite attractive and understand the builder's complaint stated in the second part of the notice, but we would like to see the code, as it is written, adhered to. That is the essence of our feelings at this point.

As our plans now stand we will return home the 16th and will be curious to see how the meeting goes the 11th.

Sincerely yours,

Kay and Dick Efron  
108 Oxford Street  
Chevy Chase MD 20815  
301-657-8492

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